

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

UNITED STATES DISTRICT COURT

FILED US District Court-UT
SEP 27 '21 AM 11:42

for the

District of Utah

Central

Division

Michael J. Franchek
Minor Child JF

Case No.

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Park City Utah Municipal Corporation, Ofc. James
Rodrigues, Sgt. Cameron Thor, Ofc. Craig Proctor, Ofc.
Keltsey WareJury Trial: (check one) ☒ Yes ☐ No

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case: 2:21-cv-00563

Assigned To : Pead, Dustin B.

Assign. Date : 9/27/2021

Description: Franchek v Park City
Municipal et al

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name
Address

Park City

City

Ut

State

Zip Code

County

Summit

Telephone Number

E-Mail Address

Michael J Franchek + JF
2100 PARK AVE # 682822
84068

435-659-7648

michaeljfranchek@gmail.com

gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Park City Municipal Corporation

Job or Title (if known)

Margaret Plane, City Attorney

Address

445 Marsac Ave.

Park City

City

UT

State

84060

Zip Code

County

Summit

Telephone Number

801-671-5180

E-Mail Address (if known)

margaret.plane@parkcity.org

☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name

James Rodrigues

Job or Title (if known)

Police Officer

Address

2060 Park Ave

Park City

City

UT

State

84060

Zip Code

County

Summit

Telephone Number

435-615-5500

E-Mail Address (if known)

unknown

☐ Individual capacity ☒ Official capacity

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Defendant No. 3

Name Cameron Thor
 Job or Title *(if known)* Police Sargent
 Address 2060 Park Ave
 Park City UT 84060
City State Zip Code
 County Summit
 Telephone Number 435-615-5500
 E-Mail Address *(if known)* unknown

☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name Keltsey Ware
 Job or Title *(if known)* Police Officer
 Address 2060 Park Ave
 Park City UT 84060
City State Zip Code
 County Summit
 Telephone Number 435-615-5500
 E-Mail Address *(if known)* unknown

☐ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Plaintiff(s) were deprived of their 1st, 4th, 5th and 14th amendment rights by defendant(s)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Defendants James Rodrigues, Cameron Thor, Keltsey Ware and Craig Proctor were employed by co-defendant Park City Municipal Corporation as as Law Enforcement Officers and were in uniform and acting in their official capacity at the time.

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

Spaulding Court, Park City Utah 84060

- B. What date and approximate time did the events giving rise to your claim(s) occur?

September 29, 2019 approximately 3pm to 11pm

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Please See Attached Exhibit (C- Statement of Facts By Plaintiff(s))

Full video recording of this incident
is available on youtube channel
"The Docktor"

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Plaintiff Michael Franchek received minor bruising and was taken to Intermountain Hospital Park City and evaluated. Diagnosis was increased heart rate and situational stress from incident. Plaintiff suffers from PTSD as a result of this incident.

Plaintiff JF received minor superficial wounds and was not treated. Plaintiff suffers from PTSD as a result of this incident. The minor JF is terrified at the sight of Police Officers and fears for his safety.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Relief Sought:

Granting Plaintiff(s) a declaration that the acts and omissions described herein violate his rights under the Constitution and laws of the United States, and

- 1) Plaintiff, Michael Franchek seeks compensatory damages in the amount of \$500,000
 - 2) Plaintiff, JF seeks compensatory damages in the amount of \$200,000
 - 3) Both Plaintiff(s) seek punitive damages from each defendant in the amount of \$50,000
 - 4) Plaintiff, Michael Franchek seeks monetary damages of \$1200 for medical treatment as billed by Intermountain Healthcare
 - 5) Plaintiff, Michael Franchek seeks monetary damages of \$200 for damages to real property by Defendant(s)
 - 6) Plaintiffs also seek a jury trial on all issues triable by jury
 - 7) Plaintiffs also seek recovery of their costs in this suit
 - 8) Any additional relief this court deems just, proper, and equitable.
 - 9) Unsealing of Park City Municipal Court Records of Brady-Giglio Records of Defendant Rodrigues
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VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 08/02/2021

Signature of Plaintiff

Michael J. Franchek

Printed Name of Plaintiff

Michael J. Franchek (in Pro Se)

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address